Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10704/2017

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On 26 November 2018 **On 04 January 2019**

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant
and

MS P
(ANONYMITY DIRECTION MADE)
Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Mr A De Ruano, Legal Representative, Goodfellows Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal but for ease of reference I shall throughout this decision refer to the Secretary of State who was the original respondent as "the Secretary of State" and to Ms P who was the original appellant as "the claimant".

2. This appeal first came before me on 6 April 2018 when following submissions made on behalf of both parties I found that the decision of the First-tier Tribunal had contained a material error of law, such that it had to

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be remade. Much of what I wrote in that decision will be repeated in this decision.

3. The claimant is a national of India who was born in March 1985. She entered the country as a student in August 2008 and her leave was subsequently extended to July 2016. Just before her then current leave expired, on 21 April 2016 she applied unsuccessfully for a residence card as the primary carer of a British citizen. She then overstayed. She claimed asylum after having been served with notice as an overstayer, on 19 April 2017. A decision to refuse that application was made on 12 October 2017 and it was in respect of that refusal that the claimant appealed.

4. This appeal was successful before First-tier Tribunal Judge Trevaskis, who gave his decision in a Decision and Reasons promulgated on 27 November 2017 following a hearing at Newport six days earlier on 21 November 2017. It is against this decision that the Secretary of State has appealed, leave having been granted by First-tier Tribunal Judge Scott-Baker on 15 December 2017.

5. The relevant background is as follows. The claimant's case is that she had previously been sexually abused and otherwise suffered ill-treatment at the hands of her in-laws and her family and that by reason of past persecutory treatment she would, if returned to India, suffer further ill treatment from these family members. She also claimed to be at risk from her own family. As I noted in my error of law decision, in his findings of fact Judge Trevaskis had found that the claimant would be at risk from the family of her in-laws, if she "comes within their power", but that with regard to the claim to fear persecution by her own family her evidence was "less convincing". The judge found as a fact at paragraph 41 of his decision that the claimant had not been disowned by her family and would not be at risk of persecution by them. It was also the case that she has an 11 year old daughter who is currently being supported by a cousin within India, and that fact was not at this time disputed.

6. The Secretary of State made it clear at the error of law hearing that he did not seek to challenge the judge's finding that so far as the family of her in-laws is concerned, were she to be returned to India in circumstances where she came within their power she would be at risk of persecution. Where however it was said that the judge was in error was that he failed to give adequate reasons as to why in the first place there would be insufficiency of protection available from the Indian authorities within her home area, and secondly, why in any event she could not relocate internally within India.

7. I set out in my error of law decision what the judge stated at paragraph 44 of his decision with regard to the issue of sufficiency of protection, as follows:

> "S*ufficiency of protection*

> 44. The background information states that, although laws exist to protect women against domestic violence, rape and similar offences, effective implementation is lacking in many instances. I have taken particular account of past persecution and the attempts by the appellant to seek protection; she stated that she informed a police officer of her persecution by her in-laws, and was advised not to make a formal report; I find this evidence credible, when considered against the background evidence, and it leads me to conclude that I am not satisfied to the required standard that the appellant will be able to avail herself of sufficient protection from such persecution by the authorities in India".

8. The Secretary of State has submitted that the reasons given for the finding that there would be insufficiency of protection were wholly inadequate. The fact that an individual police officer may have advised the claimant against making a formal report was insufficient to found a conclusion that there was a lack of sufficiency of protection. In my judgement, as I stated within the error of law decision, the Secretary of State's submission in this regard was well-founded. Whether or not there would be a sufficiency of protection would depend upon whether the claimant, having made proper attempts to secure such protection, would still not receive it. The fact that she had apparently been advised by one officer not to make a formal report fell short of the reasons necessary for justifying such a finding. As I noted, that was not to say necessarily that other reasons might not have been open to the judge; however, the reasons given did not in themselves justify the findings which the judge had made.

9. I also set out within the error of law decision how the judge approached the issue of internal relocation, at paragraph 42, as follows:

> "*Internal Relocation*
>
> 42. The proposed return of the appellant is based entirely upon the respondent's rejection of her claim, and the belief that she will be able to return to her family. I am satisfied to the required standard that that is a false premise because, if she returns to her own family, her whereabouts will become known to her in-laws. If she is returned, therefore, it will be as a lone female without family support, presumably accompanied by her child and she will be likely to face destitution".

10. I considered that there were a number of assumptions within this paragraph which were not adequately reasoned. In the first place, it did not necessarily follow from the finding that if she were to return to her own family her whereabouts would become known to her in-laws, that if she internally relocated, her in-laws would still know where she was. The judge specifically did not make a finding that, as claimed by the claimant, her in-laws are influential politically (stating at paragraph 40 that, "Whether or not they are politically influential …" when considering that she would be at risk if she came within their power) and as already noted the judge at paragraph 41 specifically rejected the claimant's assertion that her own family would no longer support her. In these circumstances, I

considered that even if the judge was of the view that if the claimant returned to live with her family this would become known to her in-laws, that was not an adequate basis for finding that if she was living elsewhere her whereabouts would become known to her in-laws.

11. I also considered that the judge was not justified by any reasoning within his decision in asserting that the claimant would return "as a lone female without family support". Given that in the previous paragraph the claimant's assertion that she had been disowned by her family was rejected by the judge, and in that paragraph the judge had referred to evidence that her application for a student visa had been supported by her parents "at a time when she claims that she had already been disowned by them", I considered it to be at least arguable that the claimant would still have the support of her family. At the very least this was something which ought to have been considered by the judge. Also, as there was no dispute but that the claimant's 11 year old daughter was then being looked after by her cousin, the judge needed to consider that fact also in the context of what family support will be available to the claimant on return. He also needed to have this fact in mind before continuing that she would "presumably [be] accompanied by her child". As her child is currently being looked after in India by a cousin, it may well be that that position could continue on return. This judge simply did not consider this aspect of the case at all.

12. Further, with regard to the judge's finding that "she will be likely to face destitution", again this was not adequately reasoned. The evidence in this case indicated that this claimant is someone who has a history of working and she is clearly very well-educated. How the judge came to find that it followed from the fact that she had an 11 year old daughter that she would be likely to face destitution is not clear from the decision. There are undoubtedly many people within India, as indeed in other countries who are single mothers, with or without some family support, who are able to survive on their own earnings. This may or may not be the case here, but these were matters which needed to be considered by the judge before reaching the conclusion that he did in such a short paragraph that the option of internal relocation would not be available in this case.

13. For these reasons I found that there were material errors of law within Judge Trevaskis's decision, such that further findings would have to be made as to sufficiency of protection and internal relocation. I then gave directions which were discussed with the claimant's representative. I decided that it would be appropriate to retain this appeal in the Upper Tribunal because the First-tier Tribunal Judge's findings of fact would be retained. That meant that this appeal would proceed on the basis that it had been found first the claimant to be at risk were she to come within the power of the family of her in-laws, but secondly that she would not be at risk of persecution from her own family and nor had she been disowned by them.

14. Accordingly, I directed that the appeal was to be adjourned to come before me on the first available date after Monday, 4 June 2018 and that the hearing would determine first whether or not there would be a sufficiency of protection available to the claimant were she to return to her home area, and secondly whether in any event the option of internal relocation would be available to her. I also gave permission to the claimant to adduce further evidence provided such evidence was served on the Secretary of State and filed with the Tribunal by no later than Friday, 25 May 2018. I directed also that if the claimant wished to give further evidence she may do so, but that she must include within the evidence to be submitted on her behalf a witness statement capable of standing as evidence-in-chief. I also gave permission to the Secretary of State to adduce further background evidence relating both to sufficiency of protection and also internal relocation, but this evidence also should be served on the claimant and filed with the Tribunal by no later than 25 May 2018.

15. The appeal was then listed before me for hearing on 26 June 2018 when the claimant was represented by Mr Joseph, Counsel, instructed by Goodfellows Solicitors, which is the firm which has been instructed throughout by the claimant. At this hearing, which was intended to be the resumed hearing at which I would hear evidence from the claimant, no request had been made for an interpreter to be provided. However, at the hearing Mr Joseph made such a request and candidly accepted that such a request should have been made earlier. It proved impossible to book an interpreter at such short notice and the earliest that an interpreter could be present was not until 3.30 p.m. and there was no guarantee that an interpreter would necessarily be here even then. In those circumstances the representatives of both the claimant and the Secretary of State invited the Tribunal to adjourn that hearing because it would not be practical to start a hearing which was listed for two hours and involved the taking of evidence that late in the afternoon. Very reluctantly I agreed that it would not be in the interests of justice to conduct the hearing without an interpreter and nor would it be in the interests of justice to start such a hearing so late in the afternoon, even assuming that by then an interpreter was available.

16. In those circumstances I gave further directions as to the rehearing of the appeal which included a direction (which in the event proved to be unnecessary) that if this would result in an earlier hearing this was a case which could be listed in front of another Judge and need not be specifically reserved to myself. I provided within those directions that a Gurjarati interpreter must be provided at the resumed hearing, and also that the other directions with regard to the issues to be determined would remain in place.

17. The appeal was then again listed before me on 10 August this year when I heard evidence from the claimant. The claimant at this hearing was again represented by Mr Joseph, but during the course of the hearing the claimant gave evidence that one of the reasons why she would be at risk

on return anywhere in India was that her husband's family had huge influence within the BJP, one of the largest political parties within India, such that wherever the claimant was within India her husband's family would be able to find her, and also that because of his influence she would be unable to avail herself of police protection which might otherwise be available to an ordinary citizen.

18. It is a fact, as I noted during the hearing, that there was absolutely no evidence at all within the papers as to any influence that any member of the claimant's husband's family might have politically. This was a factor on which the Secretary of State placed some reliance. However, in the course of her evidence, during cross-examination, when it was put to the claimant that no evidence had been adduced as to the political profile of her father-in-law or anybody else within the claimant's husband's family, the claimant said in terms that this could be found easily by carrying out a search on "Google or social media".

19. Because this is a protection claim, the consequences to the claimant if her claim is true are potentially severe, and so I considered that greater latitude should be allowed than might otherwise be the case. The potential consequence if the Tribunal made a decision adverse to the claimant by reason of a failure to provide evidence which might have been available are such that I considered it appropriate to give the claimant, with the assistance of her legal advisers, including her Counsel, a further opportunity to provide this evidence (which the claimant had said was readily available) to the Tribunal. The Tribunal invited submissions on behalf of the Secretary of State on this issue and Mr Clarke, who represented the Secretary of State on that occasion as well as on this occasion, did not attempt to persuade the court not to allow the claimant this opportunity. I accordingly made further directions and recorded the decision to allow an adjournment in a Note of Hearing which was given orally together with further directions immediately following the hearing. I noted within this Note of Hearing (at paragraph 5) as follows:

> "I have in mind that because this is a protection claim greater latitude must be allowed; the consequences if the Tribunal makes a decision by reason of a failure to produce evidence which might have been available are potentially so severe that this Tribunal considers (having discussed this issue with the representatives of both the Secretary of State and the claimant) that it would be appropriate if, as the claimant now says, such evidence is readily available to give the claimant with the assistance of her legal advisers, including her Counsel, a further opportunity to provide this evidence to the Tribunal. Of course, if, having been given this opportunity, such evidence is not provided there may well be an adverse inference drawn by the Tribunal but that is a matter on which argument may have to be heard in due course".

20. Accordingly, I adjourned the hearing part-heard and directed that it was to be relisted before me on 26 November 2018 (that is today). This date was arranged at the time, it having been established first that both Mr Clarke and Mr Joseph would be available to attend at this hearing, as obviously, this appeal being part-heard, it was important that the parties continued to be represented by the same representatives as had been present throughout the hearing.

21. I gave the claimant permission to adduce further evidence in the following terms:

> "The claimant is given permission to adduce further evidence with regard to any influence which it is said that her husband's family may have within India relevant to this appeal, but such evidence must be lodged with the Tribunal and served on the respondent by no later than Friday, 2 November 2018".

22. I invited Mr Clarke on behalf of the Secretary of State to provide a skeleton argument or written submissions which I considered would be helpful. I am grateful to Mr Clarke for providing such submissions.

23. I also directed that "To the extent that further evidence is provided, the Secretary of State will be given a further opportunity to cross-examine the claimant or any other witness upon whom reliance is now to be placed, with regard to this evidence".

24. The hearing was then relisted again before me part-heard.

25. For reasons which have never been explained to this Tribunal, the claimant has not been represented at this hearing by Mr Joseph, who had represented her at the original hearing. She was represented by Mr De Ruano, Legal Representative (a non-practising barrister) and to make matters worse, Mr De Ruano was also listed in another court at the same time. I do not attach blame personally to Mr De Ruano for this, because he informed the Tribunal and I accept that he was told by Goodfellows (for whom he was also representing another client in another court) that they either had or would request that the other hearing be listed in the same court or at the very least that the Tribunal would be asked if it was acceptable for Mr De Ruano to represent two clients in cases listed in different courts at the same time. Regrettably, so far as this Tribunal is concerned, I am unaware of any such request being made and if any such request was made it was made far too late for it to be communicated to me before the hearing.

26. Further, although apparently Mr De Ruano had an outline note of what had occurred during the hearing, it was clear that he had not been provided with a full note of the cross-examination which had occurred, and so the reality is that his submissions, such as they were, had to be made in ignorance of at least some of the evidence which had been given.

27. No application was made on behalf of the claimant for an adjournment, but nonetheless I had to consider whether it was in the interests of justice to continue with the hearing in the absence of Mr Joseph. I concluded that it was, not only because no application had been made for an adjournment, but also because the claimant had been given every opportunity to provide further evidence if it was available and the issues had all been well-canvassed before the Tribunal. Any further adjournment would, on the facts of this case, have done no more than delay what, for the reasons I will give below, I consider to be the inevitable result of this hearing.

28. Notwithstanding the directions I had given, which were noted down by Mr Joseph at the time, that any further evidence should be filed by 2 November 2018, no evidence at all was filed by that date and all that has been filed was apparently a twelve page fax which was sent to the Tribunal some two or three days before the hearing and which this Tribunal did not see until today. It is fair to say that there is nothing of any relevance to the issues which have to be considered within this bundle. There are some photographs purporting to be of the claimant's husband with what is said to be "BJP Party members", but they are not in English and have not been translated and this Tribunal has absolutely no idea of who is in these photographs. There are some other unidentified photographs purporting to show injuries to the claimant, but they obviously do not address the issue at all of what influence her husband's family have within India. There is a certificate of marriage and a document purporting to be an agreement for a divorce, but again neither of these touch on the issues concerning which the claimant had said that she could easily provide evidence. There is also a page from Wikipedia of one "Dilip Patel" who is apparently an Indian politician and Member of Parliament who was born in April 1955 but there is no evidence either as to what he does or what influence he has, but more importantly as to any relationship he may or may not have with any member of the claimant's family. Mr De Ruano very fairly when making such submissions as he could on behalf of the claimant accepted that there were, as he put it, "limits in the evidence" that had been produced on behalf of the claimant. There remains in reality absolutely no evidence at all that any member of the claimant's husband's family have any significant influence within India at all.

29. I now approach this appeal having accepted the findings of the First-tier Tribunal that were the claimant now to come within the power of the family of her in-laws she would be at risk, but that much of the claimant's evidence could not be taken at face value. I have also had the benefit of hearing the claimant give her evidence and it is fair to say that on a number of important points there were significant inconsistencies between the evidence which she gave to the Tribunal in cross-examination and what she had said within her witness statements or interviews. I do not propose to set these out in full, but will deal with just some examples. The claimant's essential case is that, "even though none of this was mentioned until a very long time after she had arrived in the UK", the claimant had

left India because she had been under threat from her husband's family. In her witness statement at paragraph 19 she had stated that her husband had threatened to kill her in 2014. She said there that "This was the fourth last time I spoke to my husband", apparently after he had obtained the claimant's phone number from her aunt. In her witness statement she had stated when the other three times were that she had spoken, or been in contact with her husband. The first time was after she had arrived in this country and she wanted him to know apparently that she had escaped from the "abusive relationship" and that she and her daughter were about to start their new lives in the UK. The second time was apparently when she was making a visa application. The third time was when she spoke to him regarding a divorce.

30. It is quite extraordinary that apparently she made a visa application on behalf of the husband from whom and from whose family she was escaping. Moreover, this evidence is completely inconsistent with the evidence the claimant gave when cross-examined which was that she spoke to her husband twice a month after she entered this country in 2008. There is another very odd feature of this evidence which is this: one of the matters put to the claimant in cross-examination was that it was very hard to understand how if her husband's family was so influential in India they had somehow kept away from her daughter who was in India and that they had apparently not even been able to find her, even though they lived only about 70 kms away. The claimant's explanation for this was that they all believed that she had taken her daughter with her to the UK (which was at least consistent with her statement in which she had claimed that she had told her husband over the phone that she and her daughter were about to start their new lives in the UK. Not unreasonably Mr Clarke asked her then about the regular phone calls that she now said she had had from her husband (which as already noted was inconsistent with her account in her witness statement) and what she had replied within these phone conversations when her husband had asked to speak to his daughter, to which she responded that he had never asked to speak to his daughter at all.

31. This is really quite extraordinary, and in the judgement of this Tribunal, it is even more extraordinary that she was apparently seeking to assist this man who (on her case) so totally lacked interest in his child to obtain a visa to come to the UK. It is also odd, to say the least, that while applying for a visa for her husband to come to the UK there was no mention within the application of her daughter. With regard to this part of the claimant's evidence, I do not believe she was telling (or even attempting to tell) the truth.

32. I do not need for the purposes of this decision to make any further findings with regard to precisely what level of violence was suffered by this claimant at the hands of her in-laws, because the finding that she would be at risk if she came within the power of her husband's family has been retained. However, so too was the finding that the claimant would not be

at risk from her own family who had supported her financially when she had obtained her visa to come to the UK originally.

33. The background evidence on India is that in general there is sufficiency of protection and will certainly be so in many places within India to which this claimant could relocate. As already noted above, this claimant is a well-educated lady. She has a diploma in Mechanical Engineering and an ACCA, and she has a history of working. Her family in India were previously supporting her financially and it is clear that her cousin has been looking after her daughter for some nine years now (and the claimant has not suggested that this arrangement would not continue at least for some further period were she to win this appeal). For these reasons I find that she would not be returning as a lone woman with no means of support.

34. The claimant has been given every opportunity to provide evidence, if there was any, as to the influence which her husband's family is said to have within India, such that the usual presumption that there is sufficiency of protection should be displaced. As already indicated above, she has produced absolutely nothing at all, and when one combines this with the adverse credibility factors which in my judgement are compelling, there is no even arguable basis upon which I could properly find, even to the lower standard of proof, that she would be at risk if she relocated internally. It is not unduly harsh to require her to do so and there is no evidence before this Tribunal to support her case that if she did so she would be at any risk at all.

35. It follows that the claimant's appeal must be dismissed, and I so find.

Decision

I set aside the decision of First-tier Tribunal Judge Trevaskis as containing a material error of law, and remake the decision, dismissing the claimant's appeal on all grounds.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Upper Tribunal Judge Craig Date: 27 December 2018